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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The right to adequate housing: progress report submitted by Mr. Rajindar Sachar, Special Rapporteur appointed pursuant to resolution 1992/26 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and decision 1993/103 of the Commission on Human Rights

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Introduction

1. On 29 August 1991, at its forty-third session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted without a vote resolution 1991/26 in which it entrusted Mr. Rajindar Sachar with producing a working paper on the right to adequate housing, with a view to determining how best to further both the recognition and the enforcement of the right.

2. The working paper (E/CN.4/Sub.2/1992/15) was submitted to the Sub-Commission at its forty-fourth session and discussed by it at length. During that session, the Sub-Commission adopted without a vote resolution 1992/26, entitled "Promoting the realization of the right to adequate housing" in which, inter alia, it expressed its appreciation of the working paper and encouraged all States to pursue effective policies and legislation aimed at creating conditions aimed at ensuring the full realization of the right to adequate housing of the entire population, concentrating on those vulnerable groups that are homeless or inadequately housed.

3. The working paper was well received by members of the Sub-Commission and non-governmental organizations. They appreciated the approach taken by the Special Rapporteur of identifying the root causes in society of the prevalence and perpetuation of housing crises. The approach taken of both identifying violations and projecting the need for sustained work on "preventative" rights such as housing as a means of grasping the potential of the human rights approach was also acknowledged.

4. The Commission on Human Rights, at its forty-ninth session in its decision 1993/103, endorsed the decision of the Sub-Commission to appoint Mr. Rajindar Sachar as Special Rapporteur on promoting the realization of the right to adequate housing.

5. This first progress report will examine in detail several of the issues touched upon in the working paper prepared by the Special Rapporteur, including the following themes: parallel developments; the legislative basis of housing rights; a synthesis of State obligations and concurrent responsibilities; the entitlements of housing rights; domestic legislation on housing rights; the question of the justiciability of housing rights; housing rights jurisprudence; violations of housing rights; and preliminary conclusions and recommendations. The central focus of this report will be an attempt to elaborate and clarify States' obligations concerning the human right to adequate housing, as well as other legal dimensions of this fundamental human right.

6. Other points raised in the working paper of 1992 will be addressed in subsequent reports. In the next report, the Special Rapporteur proposes to explore de facto situations concerning the degree of fulfilment of the right to adequate housing and how the right to housing can most effectively be applied, asserted and implemented in concrete situations throughout the world.

7. In spite of the considerable legal foundations of housing rights that exist, as this report will demonstrate, and the general agreement within the human rights community that housing and living conditions continue to worsen the world over, it is a fact that housing rights and the entitlements inherent therein remain of peripheral concern and are a largely unexplored dimension of human rights. A clear indication of this is the complete omission of any mention of this right, or any acknowledgement of the ongoing work in various United Nations human rights bodies, from the draft declaration prepared for the World Conference on Human Rights.

8. Faced with the incontestable evidence, not only from the developing countries but from the industrialized countries, as well as the former Soviet bloc, that housing and living conditions are worsening, it is an unfortunate reality that the United Nations system has until now ignored the implications of this existing state of denial and deprivation for the future of human rights the world over.

9. Following a brief exploration of the main components of the housing rights reality in the working paper and in the interest of elucidating further the causes of the global housing crisis, the following factors can be mentioned and will be elaborated upon in the forthcoming reports:

(a) **Gender and housing**: It needs to be widely recognized that women bear the primary responsibility for sustaining and maintaining homes and are the worst affected by crisis situations in their country's resource base. The issue of equal rights in terms of security of tenure and the positive role that housing rights can play as an instrument for gender equality needs to be explored in greater detail.

(b) **The role of planning**: It remains a little known fact that planning programmes and policies can have a debilitating impact on the choices available to dwellers in terms of gaining their housing rights. The role of planning as an instrument for achieving State ideology, as in the case of State actions in occupied territories, is also a cause for concern and needs to be viewed in the context of violations of the right to housing.

(c) **The prevalence of rural poverty**: In spite of routine reports of the prevalence of rampant urbanization across the globe, significant numbers of the world's dwellers (in some countries as high as 75 per cent) continue to reside in rural areas. A high percentage of these live in near-poverty situations and are denied basic housing resources. Housing rights, therefore need to be seen as much as a rural issue as an urban one;

(d) **The denial of land rights**: The continued speculation and commercialization of land (a basic housing resource), on the one hand, and unwillingness to carry out land reform so that more people would have access to land for housing purposes, on the other, are major factors hindering the achievement of the right to housing.

(e) **The prevalence of skewed fiscal policies**: The continued indulgence by the world's Governments of citizens who are already better off and the failure to reorder fiscal policies, including taxation, budgetary allocations and policies for subsidization of the disadvantaged sector, towards meeting the needs of those denied housing rights remains an area requiring change.

(f) **The non-recognition of the true home-builders**: From the evidence available from a range of sources made available to the Special Rapporteur it is clear that in many parts of the world, particularly in the developing countries, it is the people themselves, with little or no outside assistance, who build their houses and order their environments. A recognition of this reality and attempts to design policies and programmes based on the special State obligations such self-help initiatives create, would go a long way towards alleviating the housing crisis.

10. The Special Rapporteur would like to emphasize that the causes outlined above are not complete and will be augmented in subsequent reports, based on responses received concerning this manner of tackling the issues comprising the global housing crisis. The Special Rapporteur will attempt to arrive at as comprehensive a list as possible in the hope of convincingly portraying the many dimensions to the global housing crisis that in their entirety paint a very bleak picture of the conditions in which dwellers are being forced to live in both the developed and the developing world. One of the goals of the Special Rapporteur will be to demonstrate, using the information available, the urgent need for system-wide action by the United Nations on the right to housing.

11. The Special Rapporteur is of the view that identifying the international and national legal basis for housing rights and the issues arising therefrom is a necessary but not sufficient foundation for the study entrusted to him. Given the manner in which the United Nations human rights system functions this is a necessary step and a hurdle that must be dealt with and surmounted.

12. Of equal, if not more, importance are all the issues arising from an analysis of the structural causes that were identified in the working paper of the Special Rapporteur. Given the gap that persists between the world of international law and legislative measures in general and the deteriorating housing situation at the local level, it is crucial to place emphasis on and grapple with the human dimension of housing rights and all that that implies, including factors of basic survival, poverty and denial, the deprivation of means, discrimination and the lack of opportunities for democratic decision-making.

13. The Special Rapporteur must emphasize that an attempt has been made in this report to address areas which he feels have been overlooked or not examined fully enough, particularly in view of the fact that the mandate entrusted to him entails the development of ideas as to how the right to housing can more effectively and equitably be realized for everyone, everywhere.

14. Furthermore, attempts have been made to avoid duplication of other efforts of the Sub-Commission, to the extent possible.

I. PARALLEL DEVELOPMENTS

15. The work of the Sub-Commission on housing rights must be viewed within the context of the gradual but growing attention by the United Nations human rights system to these rights, as well as an increased reliance by local, national, regional and international non-governmental campaigns on the principles evolving from housing rights. Moreover, an increasing number of Sub-Commission studies are addressing elements of economic, social and cultural rights, including the studies by special rapporteurs on population transfer, extreme poverty, environment and compensation.

16. With regard to the attention of the United Nations human rights programme to the issue of housing rights, it is highly significant that of the resolutions adopted by the Commission on Human Rights at its most recent, 1993, session, at least 10 dealt with the issue of housing to one degree or another, including several resolutions on the situation of human rights in specific countries. 1/ The right to adequate housing found a particularly prominent place in resolution 1993/77 on forced evictions and resolution 1993/14 on economic, social and cultural rights. 2/

17. Reference must also be made to many interesting analyses made and perspectives taken by the independent expert on the respect for the right of everyone to own property alone as well as in association with others on the relationship between the right to own property and the right to adequate housing, including the affirmation of the approach taken by the Special Rapporteur in his working paper of 1992, as well as the many distinctions between these notions. 3/

18. The Committee on Economic, Social and Cultural Rights at its seventh session in 1992 4/ and eighth session in 1993 continued conscientiously to pursue the issue of State Party compliance with the housing rights provisions of the Covenant on Economic, Social and Cultural Rights, strongly criticizing non-compliance with these provisions by several States Parties.

19. Setting a potentially useful precedent, the United Nations Commission on Human Settlements (UNCHS) adopted its first-ever resolution on housing rights in mid-1993, entitled "The human right to adequate housing". The language used in this text reflects a significant departure from the past policy of this body, and could prove a basis for increased attention to the human rights characteristics of housing, so long ignored by the Commission and the Centre on Human Settlements (Habitat). In the resolution all States are invited to cooperate with and assist the Special Rapporteur, and to submit to him any information deemed relevant for the completion of his tasks. 5/

20. Based on these and other parallel developments within the United Nations and on the growing interest in and reliance on the human right to adequate housing at all levels, the Special Rapporteur believes that at this stage of his mandate he might most usefully contribute to this emerging consensus and broad interpretation increasingly accorded to the right to adequate housing through initially addressing a number of significant legal issues directly relevant to this right. In so doing, the Rapporteur will seek to confirm his conviction that substantial progress remains to be achieved within the human rights community and elsewhere in order to provide the substance and political

will necessary for translating the legal right to housing into reality for the hundreds of millions of people who have yet to obtain it. At the same time, however, it will be shown that far more has been accomplished with regard to the elaboration of housing rights than is commonly assumed.

II. LEGAL RECOGNITION AND FORMULATION

21. The right to adequate housing, as a distinct and unique component of international human rights law, finds recognition within a broad and diverse range of treaties, declarations, agreements, recommendations, resolutions and other legal texts. Nationally, a comparatively large number of States have explicitly codified the right to housing within their national Constitutions and nearly all States maintain legislation relevant in one way or another to the right to adequate housing. While a detailed legal coverage of each of the texts enshrining housing rights is beyond the constraints of this report, it will be useful to outline in a cursory fashion those texts where housing rights can be identified, followed by a much more detailed analysis of what these rights must be taken to mean if they are to have relevance to the beneficiaries of these rights.

22. Within the system of international human rights law, an analysis of the legal recognition and formulation of housing rights must begin with article 25 (1) of the Universal Declaration of Human Rights. This article effectively forms the cornerstone of a fundamental aspect of all economic, social and cultural rights; the right to an adequate standard of living, including the right to adequate housing. Article 25 (1) reads:

> "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." 6/

23. While much can and has been said concerning the implications of article 25, it is important to note that it formed the basis for article 11.1 of the International Covenant on Economic, Social and Cultural Rights which states:

> "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent. 7/

24. The process of formulation and the travaux préparatoires of the Covenant which lasted from 1951 to 1963 reveal the crucial importance placed on the right to housing even in the early 1950s, such that several States argued for a separate article on the right to housing. Even though no agreement could be reached in this respect, there was an insistence on including a separate implementation article, which would minimally ensure that States would adopt

legislation securing for everyone a dwelling consistent with human dignity. Such an article was, however, opposed and in the text presented to the General Assembly in 1954 housing was combined with food and clothing, in a format much as it remains today. The debates in the General Assembly, unfortunately, centred far more on the choice of terminology than on the substance of the right to housing. 8/

25. The drafting debate considered whether the word "decent" was more appropriate than the word "adequate" in highlighting the attributes of housing, food and clothing. The debate also considered whether to include the need for "international cooperation" in regard to these rights. This was finally accepted but the motion for a separate specific implementation clause for article 11 was struck down, with the Covenant being finally adopted in 1966 and entering into force in 1976.

26. It is clear from looking at the history of the drafting of article 11.1 that the States were influenced considerably by the wording and the spirit of article 25 of the Universal Declaration of Human Rights. The outcome was a narrow formulation of the right to housing, particularly in the light of the fact that the right to food received a separate article. The range of issues raised and the different visions of the right to housing expressed by the States participating in the debates indicates, however, that a broad interpretation of the right can be derived and needs elaboration by the international community. Such a perception is well supported by the use in article 11 of the word "adequate". When read together with the many connotations inherent in the phrase "continuous improvement of living conditions", the right to housing per force takes on dimensions much beyond shelter and the minimal meaning of four walls and a roof.

27. While much substance can be gleaned from article 11.1 as to the content and duties associated with the right to adequate housing, these issues will be largely implicit in the analysis of States' obligations which follows. It is important to note, however, that the right to housing qualified by the term "adequate", is a right of "everyone", and generally a right which creates expectations by society that Governments will go as far as possible towards guaranteeing this right to all dwellers in the most rapid manner possible.

28. The work of the Committee on Economic, Social and Cultural Rights, since its establishment in 1987, towards monitoring and refining the International Covenant on Economic, Social and Cultural Rights, and the wording of the revised guidelines for States' reports confirm the movement towards a broader, more holistic interpretation of the right to housing. The range and depth of the questioning of States Parties, such as on the extent of homelessness, the prevalence of forced evictions, the scope of enabling legislation and other core issues, reveals the seriousness with which this Committee is grappling with this fundamental human right, encouraging States to collect indicators that normally do not form the data-base Governments possess. In addition, the move towards addressing even more detailed questions to States based on information received by the Committee additional to their reports is also a welcome development and indicative of the continuous innovation that now marks the Committee's work on the right to housing.

29. In addition to these principal legal sources of housing rights within the body of international human rights law, the following texts also refer directly or implicitly to this right: International Convention on the Elimination of All Forms of Racial Discrimination (1965, prohibition of racial discrimination in the enjoyment of the right to housing); Convention on the Elimination of All Forms of Discrimination against Women (1979, the rights of rural women to adequate housing); Convention on the Rights of the Child (1989, the duty of States to provide material assistance, including housing to children in need); Convention relating to the Status of Refugees (1950, equality of treatment as regards housing between refugees and aliens); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990, equality of treatment with nationals in relation to access to housing, including social housing schemes, and protection against exploitation in respect of rents); International Labour Organisation (ILO) Recommendation No. 115 on Workers' Housing (1961, ensuring that adequate and decent housing accommodation and a suitable living environment are made available to all workers and their families); Declaration of the Rights of the Child (1959, the right of the child to adequate housing); Declaration of Social Progress and Development (1969, the provision for all, particularly persons in low-income groups and large families, of adequate housing); Declaration on the Right to Development (1986, equality of opportunity for all in their access to basic resources and housing). 9/

30. The 1976 United Nations Vancouver Declaration on Human Settlements 9/ contains a range of clauses relating to housing rights, including section III (8) and Chapter II (A.3), which state:

> "Adequate shelter and services are a basic human right which places an obligation on Governments to ensure their attainment by all people, beginning with direct assistance to the least advantaged through guided programmes of self-help and community action. Governments should endeavour to remove all impediments hindering attainment of these goals. Of special importance is the elimination of social and racial segregation, inter alia, through the creation of better balanced communities, which blend different social groups, occupations, housing and amenities".
>
> "The ideologies of States are reflected in their human settlement policies. These being powerful instruments for change, they must not be used to dispossess people from their homes or land or to entrench privilege and exploitation. The human settlement policies must be in conformity with the declaration of principles and the Universal Declaration of Human Rights".

31. Additionally, the regional systems of human rights protection have established legal instruments enshrining specific housing rights and related provisions. In the European context, the following texts are relevant: European Social Charter (1961, the provision of family housing, equality of treatment with respect to accommodation between nationals and migrant workers, and the right of elderly persons to the provision of housing suited to their needs and their state of health or of adequate support for adapting their housing; 10/ the European Community Charter of Fundamental Social Rights

(1989, the entitlement of disabled persons to measures aimed at improving their social and professional integration, including housing); the Final Act of Helsinki (1975, equality of rights between migrant workers and nationals, including the right of migrant workers to enjoy satisfactory living conditions, especially housing conditions); Conference on Security and Co-operation in Europe (CSCE), Vienna Concluding Document (1989, States to pay special attention to problems in the area of housing); and Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990, special attention to housing). 11/

32. Both the inter-American system of human rights of the Organization of American States (OAS) and the African system of human rights of the Organization of African Unity (OAU) have devoted discernably less attention to housing rights, despite the fact that member States each have, in varying degrees, international obligations to fulfil these rights, and that a number of States in these regions have enshrined housing rights in their Constitutions.

33. Although article 31 (k) of the OAS Charter, of 1948, notes that States agree to dedicate efforts towards adequate housing for all sectors of the population, this formulation falls short of a legal right to adequate housing. A clause similar to article 25 of the Universal Declaration of Human Rights is found in article 11 of the OAS American Declaration on the Rights and Duties of Man. However, no subsequent OAS human rights text has explicitly recognized housing rights, including the Additional Protocol to the American Convention on Economic, Social and Cultural Rights. The original drafts of that Convention contained such clauses, but they were deleted prior to adoption. The African Charter on Human and Peoples' Rights, while an innovative human rights instrument in many respects, also fails to recognize a right to adequate housing.

34. To sum up the legal position of housing rights, the right to adequate housing finds clear recognition in a broad range of the treaties and other agreements comprising international human rights law, with regional legal systems appearing to be more hesitant in accepting this right in explicit formulations. These legal foundations of the human right to adequate housing provide clear and indisputable evidence of the widespread acceptance of this norm, as well as exposing the corresponding legal nature of the right. While a degree of clarity can be derived from examining the letter and spirit of the texts which do, in fact, include this right, we will now turn to the equally important issue of State responsibility and housing rights.

III. ELUCIDATING STATE RESPONSIBILITIY

35. The working paper of the Special Rapporteur briefly explored some of the crucial issues relating to State obligations and responsibilities arising from the legal recognition of the human right to adequate housing by States, and indicated the type of issues requiring further analysis in this respect. 12/ The Special Rapporteur is of the view that an understanding of the inherent relationships between the nature of the rights such as housing rights that are bestowed on individuals, families, groups and communities and the appropriate role of the State in this respect can be most effectively considered through further elucidating the principles of State responsibility.

36. As with all economic, social and cultural rights, the acceptance and recognition of the right to adequate housing and the implications arising from this norm necessarily create a general series of binding obligations upon States. From an examination of the pre-eminent issues stemming from economic, social and cultural rights, relevant provisions of international treaties, the emerging jurisprudence relating to housing rights and other legal commentaries concerning this right, State practice in this respect and other views, a series of inferences can be derived about States' obligations regarding housing rights.

37. Still, there remains confusion surrounding the ultimate nature and purpose of economic, social and cultural rights, as has been outlined by Asbjørn Eide:

> "Traditional wisdom will have it that economic and social rights have to be provided by the State, over its budget, and for this reason they are costly and lead to an overgrown State apparatus. This view results from a very narrow understanding of the nature of these rights and of the corresponding State obligations ... The individual or family is expected, wherever possible through her or his own efforts and by the use of his or her own resources, to find ways to ensure the satisfaction of his or her own needs, individually or in association with others. The use of one's own resources, however, requires that that person possesses or has sustainable access to, resources that can be used - typically land, labour or capital." 13/

38. The work of the Special Rapporteur of the Sub-Commission on economic, social and cultural rights, Mr. Danilo Türk, has provided another useful basis for analysis of these rights, phrased in terms of a priori postulates upon which any coverage of economic, social and cultural rights must be based. The main postulates are worth noting:

(a) All States possess varying degrees of legal obligations to fulfil economic, social and cultural rights. These obligations have local, national, regional and international dimensions.

(b) Economic, social and cultural rights are interdependent with and are as legal in nature as civil and political rights. They are non-temporal in nature; their application and relevance should be consistent and sustainable, notwithstanding the frequent ebb and flow of both the internal and external economic environment. Constant attention must be paid to utilizing "all available resources" towards the fulfilment of these human rights.

(c) While specific State obligations may differ, all human rights must be applied on a basis of equality of access and opportunity in fact and in law for all persons. Due priority must be placed on those who are most vulnerable and disadvantaged and consequently, least able to achieve these rights for themselves.

(d) States with specific legal obligations to fulfil economic, social and cultural rights are obliged, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all.

(e) Legal obligations towards the realization of economic, social and cultural rights are multidimensional. At the macro level they affect, inter alia: 1. national and local governments and agencies, as well as third parties capable of breaching these norms; 2. the international community of States; and 3. intergovernmental organizations and agencies.

(f) Stemming from point (e), all actors with both implicit and explicit mandates vis-à-vis the realization of economic, social and cultural rights should recognize the direct applicability of their work to the issue of economic, social and cultural rights, as well as ensuring that the policies, projects, perspectives and programmes pursued by them do not harm the prospects of these rights being realized nor the capability of a State to fulfil its own legal responsibilities. 14/

39. If we apply this and subsequent perspectives to the right to adequate housing, we can seek to preclude confusion and possible misunderstandings as to the legal nature, scope and intent of the right to housing. It is thus submitted that the legal recognition and obligations inherent in housing rights, at the most basic level, do not imply the following:

(a) That the State is required to build housing for the entire population;

(b) That housing is to be provided free of charge by the State to all who request it;

(c) That the State must necessarily fulfil all aspects of this right immediately upon assuming duties to do so;

(d) That the State should exclusively trust either itself or the unregulated market to ensure this right to all; or

(e) That this right will manifest itself in precisely the same manner, in all circumstances or locations.

40. Of course, qualifications must be made to some of these perspectives so that States do not misinterpret and abrogate State responsibility particularly for the highly disadvantaged groups such as the homeless, disabled, victims of riots or ethnic strife, man-made and natural disasters and other groups unable to fulfil their housing rights on their own.

41. Conversely, the fundamental nature of an adequate place to live in peace, dignity and security is such that a recognition of housing rights must be seen and interpreted, in the most general sense, to imply the following:

(a) That once such obligations have been formally accepted, the State will endeavour by all appropriate means possible to ensure everyone has access to housing resources adequate for health, well-being, security and consistent with other human rights;

(b) That a claim or demand can be made upon society for the provision of or access to housing resources should a person be homeless, inadequately housed or generally incapable of acquiring the bundle of entitlements implicit with housing rights; and

(c) That the State, directly upon assuming legal obligations, will undertake a series of measures which indicate policy and legislative recognition of each of the constituent aspects of the right in question. 15/

42. Extrapolating from these general perspectives, the Special Rapporteur believes that, through an analysis of the emerging jurisprudence and other interpretive exercises of the United Nations treaty bodies (particularly the Committee on Economic, Social and Cultural Rights 16/), the established general principles of international law, selected regional, national and local case law, the legislative formulation and intent of the right to adequate housing throughout international law, the interpretative postulates contained in the Limburg Principles on the Implementation of the Covenant on Economic, Social and Cultural Rights, 17/ the work of Special Rapporteurs of the Sub-Commission such as Mr. Eide on the right to food and Mr. Türk on the realization of economic, social and cultural rights, and other accepted methods of legal interpretation, a synthesis of the obligations arising from the right to adequate housing can be readily outlined, with relative precision. The Special Rapporteur would appreciate receiving remarks on this analysis from fellow members of the Sub-Commission.

IV. GOVERNMENTAL OBLIGATIONS: A SYNTHESIS

43. The widespread legal recognition of the right to adequate housing is of both legislative, juridical and political importance. The Global Strategy for Shelter to the Year 2000 18/ accepted by all Governments, states:

> "The right to adequate housing is universally recognized by the community of nations. All nations without exception, have some form of obligation in the shelter sector, as exemplified by their creation of housing ministries or housing agencies, by their allocation of funds to the housing sector, and by their policies, programmes and projects ... All citizens of all States, poor as they may be, have a right to expect their Governments to be concerned about their shelter needs, and to accept a fundamental obligation to protect and improve houses and neighbourhoods, rather than damage or destroy them."

44. "Adequate housing" is defined in the unanimously adopted Global Strategy as meaning: adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities, all at a reasonable cost. It should be noted that this basic view of adequacy, while indeed rudimentary in nature, was essentially reaffirmed and expanded in General Comment No. 4 of the Committee on Economic, Social and Cultural Rights.

45. As fundamental as such sentiments are, however, in practical terms much greater lucidity will be required in identifying the specific steps Governments should take and those actions from which they should refrain, to

reconstruct these paper rights into concrete realities for the people who are entitled to them. The right to housing and, indeed, all economic, social and cultural rights, create a lengthy and complex series of obligations on States. The articulation of the practical measures required for the realization of these rights must necessarily include discussions on the basic nature of governance and the extent of decision-making and political participation available to people and communities in the country concerned. A central condition for the fulfilment of any right surely has to be the opportunity for people and communities to gain and retain their right to housing.

46. Any analysis of economic, social and cultural rights, particularly in terms of deriving or elaborating State obligations, must necessarily base itself upon previously tested models of analysis, and upon these generally recognized principles. Using this methodology, two methods of establishing governmental legal obligations with regard to the right to housing can be utilized: (a) the duties established in article 2.1 of the Covenant; and (b) the more specific obligations incumbent on States to (i) recognize, (ii) respect, (iii) protect, (iv) promote, and (v) fulfil this fundamental human right.

47. Article 2.1 of the Covenant is of central importance for determining what Governments must do and what they should refrain from in the process leading to the society-wide enjoyment of the rights found in the Covenant. This article reads as follows:

> "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

48. Although not all States have ratified the Covenant, the principles established therein are important enough to warrant a full examination of article 2.1 and its relationship to housing rights. Three phrases in this article are particularly important in understanding the obligations of Governments to realize fully the rights recognized in the Covenant, including the right to adequate housing, namely, (a) "undertakes to take steps ... by all appropriate means", (b) "to the maximum of its available resources" and (c) "to achieve progressively". The implications of each of these obligations can be generally consolidated in the following manner.

"undertakes to take steps ... by all appropriate means"

49. This obligation is of an immediate nature. Steps must be undertaken by States directly upon the ratification of the Covenant or other instruments. One of the first "appropriate" steps to be taken by States Parties should be a comprehensive legislative review of all relevant laws with a view to making national laws conform with international legal obligations. This point was reiterated by the United Nations Commission on Human Settlements in May 1993, at its fourteenth session, in a resolution entitled "The Human Right to Adequate Housing". 19/

50. The Committee on Economic, Social and Cultural Rights has recognized that in many instances legislation is highly desirable and in some cases indispensable for the fulfilment of each of the rights found in the Covenant, an issue which will be explored below. At the same time, however, the Committee has aptly emphasized that the adoption of legislative measures alone by no means exhausts the obligations of States Parties. An exclusive focus on legislation or legislative compatibility would not suffice to fulfil State duties under the Covenant. The term "by all appropriate means" has been broadly interpreted to mean that, in addition to legislative measures, administrative, judicial, economic, social and educational steps must also be undertaken.

51. In general terms, Governments must also take steps which are deliberate, concrete and targeted as clearly as possible towards meeting these obligations. Consequently, rapid steps are required towards diagnosing the existing situation with regard to the rights found in the Covenant. States Parties are also obligated to develop policies and set priorities consistent with the Covenant, based upon the prevailing status of the rights in question. Regularly measuring the progress of such measures and the provision of effective legal or other remedies represent additional appropriate steps.

52. With specific reference to the right to adequate housing, States would appear to be obligated to adopt a national housing strategy defining the objectives for the development of shelter conditions, identifying the resources available to meet these goals and the most cost-effective way of using them, which sets out the responsibilities and time-frame for the implementation of the necessary measures. Consistent with human rights law, such strategies should reflect extensive and genuine consultation with, and participation by, all social sectors, including the homeless, the inadequately housed and their representatives and organizations.

53. Additional steps are required to ensure effective coordination between relevant national ministries and regional and local authorities in order to reconcile related policies (financial, agriculture, environment, energy and so forth) with the obligations arising from article 11 of the Covenant.

"to the maximum of its available resources"

54. This phrase, and the implications arising from it, represents perhaps the core issue in the perception and practice of States vis-à-vis economic, social and cultural rights. In practice, States continue to exhibit an overarching tendency to rely on this principle in seeking to rationalize failures to ensure these rights.

55. At the most rudimentary level, this phrase means that both the resources within a State and those provided by other States or the international community must be utilized towards the fulfilment of each of the rights found in the Covenant. Even when "available resources" are demonstrably inadequate, Governments must still strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.

56. Importantly, this principle requires an equitable and effective use of and access to the resources available. Though the alleged lack of resources is often used to justify non-fulfilment of certain rights, the Committee on Economic, Social and Cultural Rights has emphasized that even in times of severe economic contraction and the undertaking of measures of structural adjustment, vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes.

57. In order for a State to be able realistically to attribute its failure to meet at least its minimum obligations to a lack of available resources it must demonstrate that every effort has been made to use all the resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations. However, the failure to meet the obligation to assess and tackle the nature of society's non-enjoyment of the rights found in the Covenant can never be justified by a lack of resources. The obligation of States, however, is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right to adequate housing for every individual in the shortest possible time in accordance with the maximum of available resources.

"to achieve progressively"

58. This principle imposes an obligation on States to move as expeditiously and effectively as possible towards the goal of realizing fully each of the rights found in the Covenant. Put simply, States cannot defer indefinitely efforts to ensure the full realization of the Covenant. Not all rights under this text, however, require progressive realization. The adoption of legislation relating to the non-discrimination clauses of the Covenant and monitoring of the status of realization of the rights in question must occur immediately following ratification. This obligation must be read in the light of article 11.1 of the Covenant, in particular, the phrases "an adequate standard of living" and the "continuous improvement of living conditions".

59. Conversely, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources. The obligation of progressive realization, moreover, exists independently of the increase in resources. Above all, it requires effective use of resources available, both from domestic and external sources.

"a minimum core obligation"

60. Under the Covenant on Economic, Social and Cultural Rights, each State Party, notwithstanding its level of economic development, has a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights found in this instrument. According to the Committee on Economic, Social and Cultural Rights, a State Party in which any significant number of individuals is deprived of basic shelter and housing is, *prima facie*, failing to perform its obligations under the Covenant. 20/

Additional refinements

61. While any analysis of the obligations relating to economic, social and cultural rights cannot be viewed in isolation from the entitlements of the right(s) in question, the need to approach these rights from the angle of state duties is increasingly accepted. In the absence of clear, well-defined and accountable obligations of "conduct" (for example activity or passivity) and obligations of "result" (for example ends) resting on Governments, scant progress will or can be made with regard to ensuring housing rights. These approaches have been advocated by many commentators, including Scott, van Hoof and Alston, and have been divided into "layers" reflecting duties to: (a) recognize; (b) respect; (c) protect; (d) promote; and (e) fulfil. 21/ It may be constructive to examine each of these layers of obligations in turn, with specific reference to the right to adequate housing, in order to refine and clarify the nature of this right.

To recognize

62. The obligation of States to recognize the right to housing as a human right manifests itself in several key areas. Firstly, all countries must recognize the human rights dimensions of housing and ensure that no measures are taken with the intention of eroding the legal status of this right and, in particular, the entitlement that such a right provides or can accrue to those striving to gain a decent and secure place to live.

63. Secondly, legislative steps, coupled with appropriate policies geared towards the progressive realization of housing rights, are part of the obligation "to recognize". Consequently, any existing legislation or policy which clearly detracts from the legal interpretation given to housing rights would require repeal or appropriate amendment. Policies and legislation should correspondingly not be designed to benefit advantaged social groups at the expense of those in greater need. In terms of policy orientation, the incorporation of housing rights within the development objectives of States and the adoption of national and local strategies aimed at realizing the right to housing through the setting of specific targets form another dimension of recognizing this right.

64. Thirdly, the recognition of the right to housing means that measures must be undertaken by States to assess the degree to which this right is already enjoyed by the population at any given time. Even more central, an attempt must be made by States to determine the degree to which this right is not enjoyed, and to target housing policies and laws towards attaining this right for everyone in the shortest time possible.

65. In this respect, States must give due priority to those social groups living in inadequate conditions by giving them particular consideration.

To respect

66. The duty to respect the right to adequate housing indicates that Governments should refrain from any action which prevents people from satisfying their rights themselves when they are able to do so, either alone or in association with others. In many instances the only measures required

are abstention by the Government from certain practices and a commitment to facilitate the self-help initiatives of affected groups. In this context, States would be obliged to desist from restricting the full enjoyment of the right to popular participation by the beneficiaries of housing rights, as well as the fundamental rights to organize and assemble.

67. Of particular importance, the responsibility to respect the right to adequate housing means that States must abstain from carrying out or advocating the forced or arbitrary eviction of persons and groups, or other actions resulting in the dehousing of persons and communities. States must respect people's rights to build their own dwellings and order their environments in a manner which most effectively suits their culture, skills, identity, needs and wishes. Honouring the right to equality of treatment, the right to privacy of the home and other related rights also forms part of the State duty to respect housing rights.

68. In general terms, these levels of obligation could be applied to the right to housing and protection from forced eviction in the following manner. The duty to respect, according to Eide, fits in quite consistently with the right to be protected against eviction in that it:

> "requires the State, and thereby all of its organs and agents to abstain from doing anything that violates the integrity of the individual or infringes on her or his freedom, including the freedom to use the material resources available to that individual in a way she or he finds best to satisfy basic needs". 22/

To protect

69. To protect effectively the housing rights of a population, Governments must ensure that any possible violations of this right by third parties such as more powerful economic interests, landlords, property developers, neighbours and others, restricting freedom of action and access to and use of resources, are prevented. Where such infringements do occur, the public authorities should act to challenge these incursions and if necessary, guarantee access to legal remedies of redress for any infringement caused, and prevent any further deprivations.

70. In order to protect the housing rights of citizens from acts such as forced evictions, Governments should take immediate measures aimed at conferring legal security of tenure upon all persons and households currently lacking such protection. 23/ Effective measures to protect residents from discrimination, harassment, withdrawal of services or other threats must also be taken.

71. Steps should also be taken by States to ensure that housing-related costs for individuals, families and households are commensurate with income and that housing costs are never so high as to threaten the satisfaction of other basic needs. A system of housing subsidies should be established for sectors of society unable to afford or gain access to adequate housing, and tenants should be protected against unreasonable or sporadic rent increases.

72. The creation of judicial, quasi-judicial, administrative and/or political enforcement mechanisms providing redress to alleged victims of any infringement of their right to adequate housing should also be ensured by public authorities.

"To promote"

73. The promotion function requires the State to place satisfactory and appropriate legal and other forms of emphasis on the realization of the right to housing, through a series of active measures including national legislative recognition of this right, the incorporation of entitlements inherent in housing rights into housing and other policies, and the identification of discernable "benchmarks" towards the realization of this right by all sectors of society, especially disadvantaged sectors.

"To fulfil"

74. The state obligation to fulfil the right to adequate housing is the most interventionary or positive in nature. The obligation to fulfil the right to housing requires the State to take those measures necessary to ensure for each person within its jurisdiction opportunities to obtain satisfaction of those needs, recognized in the human rights instruments, which cannot be secured by personal efforts. It is under this rubric that the financial obligations of "result" enter the framework, including issues of progressive measures of taxation, public expenditure, income distribution and measures of redistributive justice, government regulation of the economy and land market and the provision of public services and related infrastructure.

75. The Committee on Economic, Social and Cultural Rights has asserted that discernable governmental obligations need to be developed aimed at substantiating the right of all persons to a secure place to live in peace and dignity, including access to land as an entitlement. The Committee has stated further that many of the measures required to satisfy the right to housing will involve resource allocations, even in times of structural economic adjustment and that in some cases public financing of housing might most usefully be spent on direct construction of new housing.

76. Generally, on the issue of housing finance, States must establish forms and levels of expenditure which adequately reflect society's housing needs, and which are consistent with the obligations arising from the Covenant and other legal sources.

77. As proclaimed in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, and reiterated subsequently by the Committee, in the use of all available resources due priority shall be given to the realization of rights recognized in the Covenant, mindful of the need to assure to everyone the satisfaction of subsistence requirements as well as the provision of essential services. 24/

78. In specific reference to the right to housing, the fulfilment function obliges Governments to provide assistance in order to ensure certain opportunities and direct assistance to those in need when no other reasonable

possibility to obtain such assistance is forthcoming. This would apply: in situations of unemployment; to the elderly, disabled and disadvantaged; in situations of natural or manmade disasters or other crises; and those disproportionately affected by improperly designed or managed programmes of structural economic adjustment.

79. The foregoing analysis reveals that in contrast to commonly held views of state obligations with regard to economic, social and cultural rights, in particular the right to adequate housing, the reach and variety of duties necessarily arising from the legal recognition of these rights are wide-ranging and complex. The recognition of these obligations also widens the options available to citizens seeking either redress for state neglect of their rights or legal standards to hold States accountable for the violation of their rights.

The obligations of the international community

80. In addition to individual state obligations towards their citizens and non-national residents, the obligations of the international community (which includes all States and international agencies) towards the realization of the right to adequate housing are also more extensive than commonly assumed. Under articles 55 and 56 of the Charter of the United Nations, for instance, and in accordance with well-established principles of international law, international cooperation for the realization of economic, social and cultural rights is an obligation of all States. This responsibility is particularly incumbent upon those States which are in a position to assist others in this regard.

81. In terms related to the right to adequate housing, the international community as a whole appears to be legally obligated to ensure a number of guarantees, such as: (a) refraining from coercive measures designed to force a State to abrogate or infringe its housing rights obligations; (b) providing financial or other assistance to States affected by natural or manmade disasters, resulting in, inter alia, the destruction of homes and settlements; (c) ensuring the provision of shelter and/or housing to internal and international refugees fleeing persecution, civil strife, armed conflict, drought or famine; (d) responding to flagrant violations of housing rights carried out in any State of the international community; and (e) diligently reaffirming the importance of the right to adequate housing, at regular intervals, and subsequently ensuring that newly adopted legal texts do not in any way detract from existing levels of recognition accorded to this right.

82. These points are crucial in view of the tacit support given by influential Governments to international financial institutions (for example, the World Bank and the International Monetary Fund) and trade agreements (the General Agreement on Tariffs and Trade, intellectual property rights, free trade agreements) that have threatened and continue to threaten to impinge on the achievement of housing rights. International exposure of the adverse consequences of these policies and programmes and insistence on the accountability of these institutions based on human rights principles is a critical requirement, and one examined in detail by the Special Rapporteur on economic, social and cultural rights in 1992. 25/ These and related issues will be explored in detail in subsequent reports.

V. THE ENTITLEMENTS OF HOUSING RIGHTS

83. As noted above, one of the barriers to achieving housing rights has been the long-standing absence of a universally recognized definition of the bundle of entitlements comprising this norm. This "hurdle" is and was perhaps more simulated than genuine, and as such a number of steps have been taken towards refining legal approaches to this matter, at all levels.

84. Most notably in terms of international legal standards, paragraph 8 of General Comment No. 4 on the Right to Adequate Housing of the Committee on Economic, Social and Cultural Rights delineates seven core components of this right. Viewed in their entirety, these entitlements could constitute the central guarantees which, under international law, are legally afforded to people possessing housing rights. They are elaborated as follows.

Legal security of tenure

85. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. Governments should consequently take immediate measures aimed at conferring legal security of tenure upon those households currently lacking such protection, in genuine consultation with affected persons and groups.

Availability of services, materials, and infrastructure

86. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, potable drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage, refuse disposal, site drainage and emergency services.

Affordability

87. Personal or household costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected from unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States to ensure the availability of such materials.

Habitability

88. Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors. The physical safety of occupants must also be guaranteed.

Accessibility

89. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. In many States increasing access to land for landless or impoverished segments of society should constitute a central policy goal. Discernable governmental obligations need to be developed aimed at substantiating the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.

Location

90. Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural places where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.

Culturally adequate

91. The way housing is constructed, the building materials used and the policies supporting these aspects must appropriately enable the expression of cultural identity and diversity. In activities geared towards development or modernization in the housing sphere it should be ensured that the cultural dimensions of housing are not sacrificed. 26/

92. These extensive entitlements reveal the multi-dimensional nature of the right to adequate housing. In their diversity they also display the breadth of issues which must be considered by States which have assumed legal obligations to satisfy the housing rights of their population. Thus, any person, family, household, group or community, living in conditions in which these entitlements are not fully satisfied could reasonably claim that they do not enjoy the right to adequate housing as enshrined in international human rights law. This, of course, raises the obvious, oft-repeated yet reasonable question of the justiciability of housing rights, which is addressed below.

VI. EXPANDING THE ANALYSIS OF STATES' OBLIGATIONS

93. In his working paper, the Special Rapporteur briefly examined the conceptual evolution of the holistic and human rights-based visions of housing rights. Through this work, new imperatives have arisen directed towards expanding and specifying, in the face of declining living conditions and increased homelessness, the nature of state obligations. The work of the Indian National Campaign for Housing Rights (NCHR) has indicated a starting point for such an analysis. In this view of housing rights, the only manner by which this right can be gained and enforced is for the State to fundamentally recast its role into that of a "guarantor" and to take steps to "create conditions" throughout society such that the right can be achieved. The adoption and implementation of the range of steps necessary to comply with such principles inherently require that human rights be seen as "positive obligations" and not merely as issues of State abstention, the provision of welfare or as being reduced to the mould of "basic needs".

94. This manner of proceeding requires that certain ill-conceived development policies and planning measures that have become the "habits" of Governments, be curtailed and where possible halted, so that the political, social and economic space is freed for housing rights to be gained. Initiatives such as mega-development projects which frequently result in large-scale evictions, industrial and agricultural processes that destroy the natural resource base on which people and communities depend, and the adoption of economic adjustment policies requiring cutbacks in the social sector thus require the most serious scrutiny. This manner of proceeding would contribute to the strategies States can develop to enable immediate steps to be taken without significant resource allocations. 27/

95. It is interesting to recall in this context the importance of land and perspectives on land in the housing rights dynamic. The 1976 Vancouver Declaration on Human Settlements addressed land in the following framework:

> "Land cannot be treated as an ordinary asset, controlled by individuals and subject to the pressures and inefficiencies of the market....the pattern of land use should be determined by the long-term interest of the community". 28/

More recently, NCHR has asserted that land has to be treated essentially as of use value and not of exchange value and equitable distribution of land and securing the access of poor households to land are necessary to promote equitable rights to housing. 29/ The fundamental issue of the indivisible relation between land and housing rights will be explored in subsequent reports.

96. In identifying the many steps that States can take and the many policy and plan measures that can be adopted for the realization of the right to housing the Rapporteur has found the work of NCHR valuable, and of relevance throughout the world. Of particular value is the contention that for the State to utilize the principles and the intent inherent in the role of "guarantor", the right to housing needs to be viewed as an "organizing principle" of state policy.

97. This role of the State as "guarantor", a notion which appears fully consistent with the legal nature of housing rights, would entail: (a) the regular production of a national status report on living conditions; (b) the development of a national resettlement policy and the drafting of a national code of conduct on forced evictions; (c) the development of a national urbanization policy, as distinct from a national housing policy; (d) the duty of the State to develop a hierarchy of policy statements based on issue-related principles that unify the vision of a development perspective, with the right to housing forming one such principle. 30/

VII. DOMESTIC LEGISLATION ON HOUSING RIGHTS

98. The breadth and scope of housing, and more specifically, housing rights-related legislation is far too encompassing to examine at length in this report, and will thus be addressed in detail in the next report. However, in an effort to indicate some of the central issues embodied in national and local laws directly pertinent to housing rights, it is necessary briefly to address the issue of constitutional recognition of housing rights. The function of this section (and the discussion in the 1994 report) should be seen as providing solid legal evidence of both the compatibility of housing rights themes and national legislation, as well as examining how such laws are utilized to transform international obligations into domestic governmental duties and individual rights.

99. The right to housing finds explicit recognition in at least two dozen national Constitutions, invariably in distinct formulations and with varying practical implications. 31/ As important as constitutional recognition of housing rights is in terms of generating the necessary social relations required for the full enjoyment of housing rights, there is disappointingly little evidence available to the Special Rapporteur that such recognition of housing rights will inherently lead to improved society-wide housing and living conditions.

100. As with all economic, social and cultural rights - if not all human rights codified in constitutions, enabling legislation and the requisite policy, planning and budgetary measures are an obvious prerequisite for transforming general principles into specific rights and duties. This transformation constitutes an infinitely important social, political and legislative process in the attainment of housing rights.

101. In his next report, the Special Rapporteur proposes to examine in detail several national laws from various regions directly appertaining to the fundamental issues arising from a recognition of housing rights. It is proposed that the Urban Development and Housing Act of the Philippines (1991), the Homeless Persons Act of the United Kingdom of Great Britain and Northern Ireland (1985), the Urban Reform Act of Colombia (1990), the Urban Land Ceiling and Regulation Act and Slum Areas Improvement and Clearance Act of India (1976 and 1956) and the United States Housing Acts of 1937 and 1949 will be examined in the next report, with a view to deriving the manner by which domestic legislation can reflect international legal principles concerning housing rights.

VIII. THE SHORTCOMINGS OF THE LEGAL APPROACH

102. All that has been established and delineated in the previous sections of this report should be seen as significant in terms of the practical potentialities of the legal housing rights approach towards securing the bundle of legitimate entitlements arising from the global recognition and constant reaffirmation of the right to adequate housing. Yet, when what the more ideal side of the law says, or can be interpreted to say, is compared with the de facto human crisis which homelessness and other denials of housing rights characterize, one is forced at least to acknowledge the inherent shortcomings of the legal approach towards issues as fundamental to survival as the right to a place to live. For as powerful as the law can be in protecting and promoting the rights of the weaker, more vulnerable groups in society, in two main respects it has failed.

103. On the one hand, housing rights provisions are systematically ignored, infringed and treated with severe scepticism by a large range of public authorities and private entities. In many respects, the law itself, particularly through the imposition of impossible building codes, de facto discrimination, non-recognition of the rights of the poor and repressive land laws, and in many other ways, purposely and wilfully discriminates against vulnerable groups, criminalizing the activities the poor are forced to undertake in order to survive and retain a place to live. These issues provoke one into asking whether housing is essentially a welfare, legal or political problem, or all three? This question and others force us to confront further issues, so commonly ignored in legal human rights analyses. For instance, even where relatively favourable laws or policies are in place, these rarely have the encompassing impact of becoming transformed into empowering housing rights measures.

104. It must also be noted that a high degree of social and political tension exists with regard to housing laws between the law-makers, the implementing authorities and civil society. Examples of the use of law wilfully to violate the housing rights of people and communities abound, as do cases of failed attempts to increase social access to housing resources through legislative processes. Examples are also abundantly available of housing rights-related legislation that in letter and spirit are consistent with human rights norms, yet are routinely abused and in which loopholes are developed through amendments, leading to a complete mockery of the original intent of the legislation.

105. On the other hand, the sheer irrelevance of international law to local communities, grassroots groups, individual dwellers, and generally to the persons these rights are designed to protect cannot be denied. Put simply, most people have absolutely no idea whatsoever that they as individuals, families or groups possess legal entitlements to adequate housing. Added to this, the right of individuals and groups legally and successfully to claim housing rights in a court of law remains the exception to the rule. In most instances, it is not the law itself, but mobilization by affected persons and communities asserting, claiming and demanding their rights which will be absolutely fundamental to the housing rights they possess in law becoming reality.

106. Additionally, approaching housing rights from a legal or even policy angle entails recognizing the oft-ignored reality that assumed notions of States acting in "good faith", or of the universal character of "the rule of law", perhaps apply fully in no more than a few countries. As important as the rule of law is in the creating of social relations conducive to the protection of human rights, as a notion it will always be insufficient in ensuring all citizens a decent place to live. Failing to acknowledge this crucial point will lead only in the direction of designing more and more grand visions of legally-based rights and the policies allegedly required to implement these, with, in the end, little or no real impact on the daily lives of ordinary people. This reality places special demands on the international legal system of human rights, if these laws are to have the impact they should in fact have upon the persons they are purportedly designed to protect.

107. As problematic and inconclusive as the legal approach towards housing rights may be, it can neither be ignored nor denied that the human rights approach to housing may prove the only real hope of ensuring to all a decent, safe and secure place to live. As Blomkvist has wisely expounded in his analysis of the limitations of policy prescriptions for alleviating housing problems:

> "The connection between civil liberties, human rights and housing may seem far-fetched, but I think it is crucial. The conception of rights is intimately connected with the rule-governed, versalistic state. Rights are valuable in themselves, but they also extend and diffuse a particular social and political 'logic'. Since a right, by definition, implies government according to a rule, rights are likely to have 'spread effects' in society and affect other sectors of state administration as well. For this reason, nothing is more damaging or threatening to the 'particularistic' state than a public awareness of and struggle for human rights." 32/

IX. ARE HOUSING RIGHTS JUSTICIABLE?

108. The often ignored, yet invariable shortcomings of viewing and acting upon housing and other human rights exclusively from a legalistic vantage point, raises the still delicate issue of the justiciability of housing rights - effectively the rights of people to assert their housing rights within a court of law. At one level, the question of whether the provision of domestic legal remedies are applicable to economic, social and cultural rights, in particular the right to adequate housing, has been answered affirmatively by the Committee on Economic, Social and Cultural Rights.

109. According to the Committee, several areas where such provisions would apply include: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; (e) complaints against landlords concerning unhealthy or inadequate housing conditions; and (f) class action suits in situations involving significantly increased levels

of homelessness. 33/ This listing shows that many components of housing rights are justiciable. And, as the following section will show, a much broader range of housing rights case-law has come about than is generally acknowledged.

110. Encouragingly, the consideration of amending the Covenant on Economic, Social and Cultural Rights through the addition of an optional protocol involving a complaint mechanism has been discussed at length and supported by the Committee on Economic, Social and Cultural Rights since 1991. 34/ This is a long overdue initiative and an unquestionable necessity if the many core rights contained in the Covenant are ever to take on practical meaning for the world's citizens.

111. It should be apparent by the manner in which housing rights have been addressed in this report, based both on existing legislation and current thinking within the United Nations on economic, social and cultural rights and the jurisprudence being developed by housing rights campaigns, that this right also maintains political dimensions. The right to housing is a right to security in a place and comprises an assertion of identity and uniqueness of culture. It is a right to participate in decision-making, to order and influence one's living environment.

112. The legal remedies required to achieve redress for infringements of this right on the one hand, or the failures of government to encourage economic and social processes that increase the availability of housing resources, such that the right to housing can be gained, on the other, are both bases upon which courts and the judicial system as a whole can certainly pass judgement. The assertion by people of their rights to dwell, given the existence of a functioning and independent legal system, is ultimately what makes such a right justiciable.

X. AN OVERVIEW OF HOUSING RIGHTS JURISPRUDENCE

113. Judicial and quasi-judicial attention to and action on the right to adequate housing and related rights has been considerably more extensive than commonly held. Several regional and other human rights mechanisms, United Nations treaty bodies and a variety of national and local courts have directly considered housing rights issues in their various judgements and decisions; sometimes with support for broad interpretations of existing law, and in other cases with more restricted views prevailing. This section will briefly explore these domains, with the exception of the work of the United Nations treaty bodies, which will be examined in the next report.

A. The European Commission and Court on Human Rights

114. Although neither the right to housing, nor explicit protection from eviction are contained in the European Convention on Human Rights and Fundamental Freedoms of 1950, several cases considered by the Commission and Court monitoring the Convention have directly dealt with this issue. Two decisions of the European Commission on Human Rights have explicitly declared that ratifying States were under no legal obligation to provide accommodation to citizens, indicating the drawbacks in failing to codify the right to adequate housing, a right without whose existence the full array of legal

protection related to this norm cannot be exercised. In a 1975 decision dealing with the right to privacy (Case 4560/70), the Commission ended its query of admissibility in the following terms:

> "The applicant finally submits that the local authority for the area in which she lived was in breach of Article 8 of the Convention by its failure to exercise its discretionary power compulsorily to acquire the freehold of her accommodation ...
>
> "It is true that Article 8 (1) provides that the State shall respect an individual's home and not interfere with this right. However, the Commission considers that Article 8 in no way imposes on a State a positive obligation to provide a home."

115. The Commission reaffirmed this perspective in another case (5727/72) by stating: "[i]t is true that the reference in article 8 to "home" - as the Government submits - is clearly concerned with the respect for the home as an existing entity and could not imply a right to be provided with housing accommodation". The sentiments of the Commission are strikingly clear in viewing the Convention as not including a right to be provided with housing accommodation.

116. A 1989 case (Mellacher and others v. Austria) judged by the European Court on Human Rights dealt with the application of article 1 of Protocol One of the Convention on the "peaceful enjoyment of possessions" in the context of rent control measures. The applicant landlord argued that his rights under Protocol One were infringed owing to the imposition of rent control measures on property he owned. However, the Court saw things differently and made the following main points in their judgement, which are generally beneficial in housing rights terms, particularly regarding the rights of tenants: (a) the disputed reductions [in rent] were neither a formal nor de facto expropriation but amounted to a control of the use of the property; (b) the legislature had wide discretion with regard to the implementation of social and economic policies, in particular in the field of housing; (c) the justifications given by the State for the legislation in question could be regarded as manifestly unreasonable; they represented the pursuit of a legitimate aim in the general interest; (d) in remedial social legislation and in particular in the field of rent control, it must be open to the legislature to take measures affecting the further execution of previously concluded contracts; and (e) the measures adopted to control rents did not fall outside the State's margin of appreciation, and although the rent reductions were striking in their amount they did not constitute a disproportionate burden.

117. The inter-State complaint case of Cyprus v. Turkey of 1976 addressed evictions as a violation of the right to "respect for the home", and thus provided significant protection against this clear violation of internationally recognized housing rights. The opinion of the European Commission held that:

> "The evictions of Greek Cypriots from houses, including their own homes, which are imputable to Turkey under the Convention, amount to an interference with rights guaranteed under article 8 (1) of the Convention, namely the right of these persons to respect for their home,

and/or their right to respect for private life. ... The Commission concludes ... that ... Turkey has committed acts not in conformity with the right to respect for the home guaranteed in article 8 of the Convention."

118. These opinions and judgements of both the Commission and Court thus contain both positive and negative dimensions regarding legal protection as to the core contents of housing rights. On the one hand, opinions have been put forth declaring large-scale evictions a violation of the Convention and rent control measures have been viewed as a "legitimate social aim". On the other hand, the Convention has been interpreted to contain no State duty to provide accommodation and to justify the removal of persons from homes they owned in of the pursuit of a legitimate social aim and in the interest of protecting the rights and freedoms of others. The situation is thus somewhat ambiguous, considering the absence of specific housing rights provisions in the Convention.

B. European Committee of Independent Experts

119. The European Social Charter of 1961, like the European Convention on Human Rights, does not contain an explicit right to adequate housing, although it does enshrine legal standards directly relevant to this right. 35/ For instance, article 19 of this text ensures the rights of migrant workers and their families to treatment not less favourable than nationals in a State party in respect to, inter alia, accommodation. Whereas in the context of the right of the family to social and legal protection (art. 16), the Contracting States undertake to promote, inter alia, the provision of family housing. The 4th Protocol to the Charter addresses the rights of the elderly to the provision of housing suited to their needs.

120. A fair amount of case law on these housing clauses has been generated by the European Committee of Independent Experts responsible for monitoring the Charter. An analysis of the existing case law on article 19 reveals the following jurisprudential considerations:

(i) It is not enough for a Government to prove that no discrimination exists in law alone; it is obliged to prove in addition that immigrant workers did not in practice suffer any disadvantage in the allocation of low-cost housing despite the de jure equality they enjoyed;

(ii) The Committee has noted that the existence of "concession laws" which frequently appear to distinguish between local residents, other citizens of this State and aliens. Such distinctions, in so far as they affect aliens, would certainly be contrary to the Charter;

(iii) In one case, it was decided that a State party in which alien workers could only be granted public housing if they had lived there for seven years failed to meet the obligations under article 19 (4);

(iv) If a State's legislation discriminates even indirectly between citizens and foreigners in respect to the purchase of real estate, it would be contrary to article 19, to the extent that this discrimination affected access by foreigners to housing;

(v) The Committee needs to know, at a minimum, whether in fixing priorities in the allocation of housing for persons on waiting lists account is taken for foreign workers of the members of their family left behind in their country of origin whom they would like to bring to the country in question; and

(vi) Even where there are social problems due to overcrowding, the number of migrant workers is small and the situation in respect of housing therefore trivial; a residential qualification of five years for the provision of publicly financed accommodation in respect of any person who was not born within the State fails to satisfy the requirements of this article. 36/

121. In yet other instances, the Committee of Independent Experts has made pronouncements concerning equality of treatment for migrant workers in the housing sphere, many of which are classified in terms of violations of these rights. In one case, the Committee concluded that a State was still failing to satisfy its obligations, and while welcoming the efforts made by the State's authorities to facilitate access to public authority housing for foreigners, it noted that no change had so far been made in the law. 37/

122. The Committee of Independent Experts has also expressed the opinion that, as regards subsidized housing, where conditions required to obtain such housing (birth or length of residence) are only applicable to nationals of States bound by the Charter, such a situation would not be in conformity with article 19 (4). 38/

123. More recently, the Committee has asserted that residence requirements in one country, while formally providing for equality of treatment, create an inequality of treatment in substance and are therefore not in keeping with the provisions of the Charter. 39/ Considering the situation in the same country, the Committee felt that the question of allocation of resources (for example low-cost housing) should rest on a criterion of the need of the applicant, so that the protection of the family is accorded the priority envisaged by the Charter, despite the limited availability of low-cost housing resources. 39/ Finally, in yet another instance, a State party was deemed not to be complying with the Charter's provisions since "public promotion housing" was allocated only to the nationals of the country concerned. 40/

124. Article 16 has been applied in a series of conclusions by the Committee during the past decade, several of which are of particular use in understanding the implications of housing rights. In one case, this body found that in order to form an opinion as to whether a State had complied with article 16, it would need to be furnished with statistics on the economic and social position of families in a given State and to have an indication as to whether its housing policy was adequate for the needs of families. 41/ Indicating further the information it required to assess fully State compliance with article 16, the Committee required a State to supply it with

information on: (i) the housing situation, especially the percentage of dwellings classified as insanitary and the criteria on which this classification was based; (ii) the inhabitant/housing ratio; and (iii) the proportion of family income taken up by rent, according to various socio-professional categories of tenants. 42/ While in another case, in view of the Committee's concern about the situation of large families and of homeless families, it stressed the need to consider family welfare in terms of the right to receive adequate housing and essential services (such as heating and electricity), these being necessary for the welfare and stability of families. 43/

C. Domestic courts

125. Domestic courts and tribunals address cases related to aspects of housing rights daily, in the context of tenure issues, discrimination, housing affordability and rents, protection from eviction, issue of housing quality and so forth. It may be useful to look at several cases as a means both of revealing the manner by which this right has been approached by courts and of showing that housing rights are indeed justiciable.

126. An independent, impartial and accessible judiciary, and the availability of legal assistance are recognized as critical factors in a well functioning legal system where human rights are taken seriously. Legal recourse by its very nature, however, has its limitations and the response of the courts in various jurisdictions has been mixed.

127. Essentially, the role of domestic courts in housing rights cases is also largely one of ambiguity, yet with a tendency in some countries more in favour of housing rights than is commonly assumed. In India, the Supreme Court and other judicial bodies have made several far-reaching decisions which have genuinely sought to protect the housing rights of dwellers, and provide substance towards the justiciability of these rights. The Supreme Court judgements stem from a derivation of article 21 of the Indian Constitution which guarantees the right to life. The Court has developed jurisprudence on this article and clarified what the expression "the right to live with dignity" means. In a 1981 case, the Court pronounced:

> "The fundamental right to life which is the most precious human right and which forms the arc of all other human rights must, therefore, be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person ... We think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing, and shelter over the head." 44/

128. In the most publicized Indian case in this regard, known popularly as the "Bombay pavement dwellers case", a constitutional bench of the Supreme Court decided in 1985 that:

"Eviction of the petitioners from their dwellings would result in the deprivation of their livelihood. Article 21 includes livelihood and so if the deprivation of livelihood is not affected by a reasonable procedure established by law, the same would be violative of article 21 ... The right under article 21 is the right to livelihood, because no person can live without the means of living i.e. the means of livelihood. If the right to livelihood is not treated as a part of the Constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. ... There is thus a close nexus between life and means of livelihood. And as such that which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life." 45/

129. In another case in 1990 the same Court decided that:

"Basic needs of man have traditionally been accepted to be free - food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. ... For a human being [the right to shelter] has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. ... A reasonable residence is an indispensable necessity for fulfilling the Constitutional goal in the matter of development of man and should be taken as included in 'life' in article 21." 46/

130. For instance, two well-known cases in the United States, while positive in many respects, fell short of supporting housing rights, as human rights. In Lindsey v. Normet (1972) the United States Supreme Court refused to support the right to housing for a tenant, claiming that it did not "denigrate the importance of decent, safe and sanitary housing". The Court held further that

"the Constitution does not provide judicial remedies for every social and economic ill. We are not able to perceive in that document any constitutional guarantee to access to dwellings of a particular quality ... [T]he assurance of adequate housing ... [is a] legislative, not judicial function." 47/

Whereas in the Mt. Laurel Case of 1982 the New Jersey Supreme Court stated that:

"there cannot be the slightest doubt that shelter, along with food, are among the most basic human needs ... It is plain beyond dispute that proper provision for adequate housing of all categories of people is certainly an absolute essential in promotion of the general welfare". 48/

131. It is not uncommon that conflicts emerge between the policies and legislation adopted by a Government and the courts which are responsible for interpreting existing legislation and checking the legality of both governmental policy and actions. Writing about the role of the apartheid

era courts in providing official legitimization of the eviction process in South Africa, the National Committee Against Removals has, for instance, stated:

> "In a case where the government has acted illegally, court action may succeed in stopping a particular attempt to relocate people. However, in most cases such legal victories are fought on technicalities and amount to temporary victories only; once the case has been won, the government need simply implement the correct procedures or, where the Act itself is insufficient for its purposes, introduce further legislation to cover this." 49/

132. In the Philippines, for example, despite constitutional recognition of both housing rights and the right not to be evicted, court injunctions against planned evictions, statements from the governmental Human Rights Commission and opposition from non-governmental organizations, these rights are routinely ignored. 50/

133. This brief overview of existing jurisprudence at the international and regional levels yields the following perspectives. Firstly, while some decisions have strongly supported housing rights, a large number of cases have effectively denied many of the claims inherent in the assertion of these rights. Secondly, the limitations on the judiciary to dictate State policy on housing rights remains severely restricted in most instances. Certain decisions may in fact bolster housing rights demands, however these rarely have society-wide impact. Thirdly, it remains extremely difficult, both in legal and financial terms, for claimants of housing rights to utilize the judicial system as a means of gaining access to their lawful housing rights.

XI. VIOLATIONS OF HOUSING RIGHTS

134. The preceding coverage of housing rights jurisprudence reveals that various United Nations human rights bodies have confirmed that housing rights can be violated by Governments. In one of the first opinions on this issue, the Committee on Economic, Social and Cultural Rights noted at its fourth session, in 1990 that:

> "The right to housing can be subject to violation. Acts and omissions constituting violations will need to be explored by the Committee, especially in the context of evictions". 51/

135. Also at its fourth session, in its General Comment No. 2, which dealt with international technical assistance measures, the Committee asserted that the international financial institutions and development agencies:

> "should scrupulously avoid involvement in projects which ... involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation ... Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are taken duly into account."

136. Since that time, the Committee has measurably strengthened its approach towards compliance by State parties with housing rights obligations. On two

separate occasions the Committee, in examining the situation regarding housing rights, determined that governmental tolerance of forced evictions in the Dominican Republic and Panama constituted an act inconsistent with the norms of the Covenant. 52/

137. Whereas, in General Comment No. 4 on the Right to Adequate Housing this perspective is globally outlined in paragraph 18:

> "the Committee considers that instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law."

138. Similarly, in its resolution 1991/12 the Sub-Commission on Prevention of Discrimination and Protection of Minorities explicitly recognized

> "the fact that the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing [and] the need for immediate measures to be undertaken at all levels aimed at eliminating the practice of forced eviction".

139. There thus remains an important need for the international legal community and others to articulate violations of housing rights, to identify violators of these rights, and to establish ways and means of preventing such breaches in the future and securing justice for those whose housing rights have suffered infringement. Examining the practice of the United Nations during the past few years reveals that, far from ignoring the issue of housing rights and directly related violations, in fact, a significant number of States have been declared to have infringed these international standards.

140. The Committee on Economic, Social and Cultural Rights has on several occasions declared States Parties to the Covenant, including the Dominican Republic, Kenya and Panama to have explicitly violated the housing rights provisions of article 11 (1) because of the involvement of the State and its agents in the carrying out of mass forced evictions. 53/ During its sixth session, the Committee issued what effectively amounted to an injunction against one State Party, urging it to suspend any actions which are not in conformity with the provisions of the Covenant. 54/

141. During the forty-ninth session of the Commission on Human Rights both Sudan and Zaire were cited as having violated fundamental human rights owing to the carrying out of mass forced displacements. 55/ The Government of Iraq was also accused of violating the right to adequate housing by the Special Rapporteur on Iraq, who stated:

> "Indeed, the Government [of Iraq] has added responsibilities for the results of the fuel shortage, which undermines basic economic activity and renders almost impossible the provision of heat for people's shelters, violating in the latter instance the right to adequate housing stipulated in article 11 of the Covenant on Economic, Social and Cultural Rights (see in particular, the 1991 General Comment No. 4 of the Committee on Economic, Social and Cultural Rights)." 56/

142. Thus far, United Nations consideration of violations of housing rights has largely been limited to the practice of State tolerance of forced evictions. However, expanding this coverage appears likely, particularly in view of the opinion of the Committee on Economic, Social and Cultural Rights in its General Comment No. 4 that

> "a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States Parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations found in the Covenant".

143. A resolution entitled "The human right to adequate housing" adopted in 1993 by the United Nations Commission on Human Settlements clearly addresses housing rights violations in two paragraphs:

> "3. Urges all States to cease any practices which could or do result in infringements of the human right to adequate housing, in particular the practice of forced mass evictions and any form of racial or other discrimination in the housing sphere;
>
> "4. Invites all States to repeal, reform or amend any existing legislation, policies, programmes or projects which in any manner negatively affect the full realization of the right to adequate housing".

144. Other acts which could provoke concern regarding possible infringements of the right to adequate housing include, but are not limited to (i) carrying out, sponsoring, tolerating or supporting the practice of forced evictions; (ii) demolishing or destroying homes or dwellings as a punitive measure; (iii) actively denying basic services such as water, heating or electricity, to sectors of society, despite a proven ability to provide these; (iv) acts of racial or other forms of discrimination in the housing sphere; (v) adoption of legislation or policies clearly inconsistent with housing rights obligations, particularly when these result in homelessness, greater levels of inadequate housing, the inability of persons to pay for housing and so forth; (vi) repealing legislation consistent with, and in support of, housing rights, unless obviously outdated or replaced with equally or more consistent laws; (vii) unreasonable reductions in public expenditures on housing and other related areas, in the absence of adequate compensatory measures; (viii) overtly prioritizing the housing interests of high-income groups when significant portions of society live without their housing rights having been achieved; (ix) constructing or allowing the building of housing upon unsafe or polluted sites threatening the lives and health of future occupants; and (x) harassing, intimidating or preventing non-governmental and community-based organizations and grassroots movements or groups concerned with housing rights from operating freely.

145. On the other hand, a series of failures to act (omissions) could, if viewed within the context of housing rights, constitute breaches of housing rights obligations. These include (i) failing to take "appropriate steps"; (ii) failing to reform or repeal legislation inconsistent with the Covenant; (iii) failing to enforce legislation inherent in the fulfilment and recognition of housing rights; (iv) failing to intervene in the housing market, especially concerning rent levels, rent control, rent subsidies,

issues of security of tenure and prevention of undue speculation; (v) failing to incorporate and implement accepted international minimum standards of achievement concerning housing rights; (vi) failing to provide infrastructure, basic services (water, electricity, drainage, sewage, etc); (vii) failing to prohibit or prevent individual or civil actions amounting to housing rights violations by any person capable of committing such acts; (viii) failing to utilize all available resources for the fulfilment of this right; (ix) failing to integrate and fully consider the implications for housing rights when developing macro-economic policies impacting upon the housing or related social spheres; and (x) failing to submit reports as required under articles 16 and 17 of the Covenant on Economic, Social and Cultural Rights, as well as under other treaties.

146. Such a listing makes abundantly clear that housing rights need to be viewed from a much broader perspective than exclusively the traditional vantage used for analysing human rights. It is apparent that without the enjoyment of housing rights, the full realization of civil and political rights is not attainable. However, establishing violations of any economic, social or cultural right, including the right to adequate housing, remains an issue subject to controversy and one which has received limited, albeit growing, attention from the international legal community. There are indications of change, exemplified by a statement of the delegation of the Netherlands at the forty-seventh session of the United Nations General Assembly, asserting:

> "It is obvious that the implementation of this right [housing] is largely facilitated if abundant resources are available within a given country. Yet many violations mentioned during the debate in the Sub-Commission cannot be explained as an automatic consequence of a lack of resources; they are rather to be attributed a Government's choice of policy options". 57/

147. Subsequent reports will seek to address the question of which United Nations agencies might be most appropriately disposed towards monitoring housing rights violations more comprehensively, and in fact, whether existing procedures and mechanisms are sufficient in this respect, or if it might be useful at this time to begin considering the need for new approaches.

XII. THE ROLE OF NON-GOVERNMENTAL ORGANIZATIONS IN DEVELOPING HOUSING RIGHTS LEGISLATION

148. The impetus within countries for developing new housing rights legislation often comes at the insistence of local community-based and non-governmental organizations who are directly involved with the often cruel reality faced by communities denied their rights to housing. The Special Rapporteur is aware of several draft housing rights bills which have been developed in this manner in locations such as Canada, Colombia, Hong Kong, India, the United Kingdom of Great Britain and Northern Ireland and other European countries and the United States of America.

149. Owing to space constraints, the present report will deal briefly with only two of these efforts and will attempt to indicate the common streams of

demands permeating these efforts, while the next report will examine these developments in more detail. When these ideas are seen along with section VI, their value in establishing new insights should be self-evident.

150. The housing rights bill, drafted by non-governmental organizations, now being publicly debated in India, is one such example. The bill rests on four pillars of entitlements for dwellers who are inadequately housed. The right to adequate housing, the principal empowering right, confers the right to reside in security and dignity, the rights to land and civic services and the right to live in a safe environment. The bill also confers a crucial bundle of rights around the right to reside and resettle and guarantees the right not to be evicted. It also confers rights to resettlement upon request by communities, and addresses the rights and duties of dwellers and the right to information. 58/

151. The innovative part of the bill is the mechanism provided for the formation of dwellers unions comprised of dwellers inadequately housed at various local, regional and State levels, who empowered by this potential legislation can gain and retain the right to adequate housing.

152. A draft convention on housing rights in Europe was recently drawn up by a coalition of European non-governmental organizations, and will eventually be submitted to the Council of Europe for official consideration. This draft is divided into both rights and duties. The rights are: housing rights for everyone; non-discrimination; gender equality; rights of chronically ill-housed groups; the special rights of the homeless; security of tenure; access to services; affordability; habitability; accessibility; suitable location; participation and control; information; housing finance; and legal remedies.

153. The governmental obligations the draft convention proposes to consolidate are: general duties; legislative action; legislative review; obligations to respect; obligations to ensure; housing supply; housing affordability; housing adequacy; provision of infrastructure and services; prevention of speculation; special duties; provision of judicial remedies; training and education; international obligations and international cooperation. 59/

XIII. HOUSING RIGHTS BASED INDICATORS

154. One manner of deriving practical measures to assess the realization of housing rights involves the identification and development of economic and social indicators that attempt to substantiate the entitlements inherent in housing rights. Such an imperative is all the more critical given the dominance of housing indicators, used increasingly by international financial institutions and Governments, that are based on viewing housing as a commodity and placing indicators within purely economic paradigms, rather than human rights considerations.

155. The indicators approach towards assessing State compliance with economic, social and cultural rights is, noticeably, a predominant theme in the progress reports of the Special Rapporteur on economic, social and cultural rights of 1990. 60/ When available, reliable and carefully chosen indicators can

assist in quantifying otherwise vaguely defined rights in a fashion which provides an opportunity for systematically viewing, for instance, the extent to which a certain right has been "progressively realized". Advocates of a "minimum threshold approach" to economic, social and cultural rights have also argued for the use of indicators in determining violations of these norms, as well as in order to lead to greater levels of enforceability.

156. Taking as a point of departure the recent developments in expanding the nature of State obligations both at the level of international standards and developments within the non-governmental organization community, and rooting the debate firmly within the human rights paradigm, a number of "inviolable postulates" have been enunciated for the purpose of devising core indicators for the assessment of the right to housing. These are: (a) non-discrimination; (b) the right to information; (c) equality of land relations; (d) democratic participation; (e) gender equality; (f) the right to a healthy living environment; (g) economic parity; (h) equity; (i) the maintenance of cultural identity and skills; and (j) the role of the Government and the State with regard to housing as a human right. 61/

157. The Special Rapporteur finds these principles valuable as a means of determining whether States are "taking steps" to create conditions for the attainment of housing rights. Conversely any core indicators devised based on these principles can serve as benchmarks against which compliance can be measured.

158. The Seminar on appropriate indicators to measure achievements in the progressive realization of economic, social and cultural rights endorsed these principles and recognized the value of core indicators for other economic, social and cultural rights. 62/ The necessity of accessing such data is exemplified by the continuing absence both internationally and within States of information as to the extent of homelessness, the prevalence of inadequate housing conditions, the degree to which components of the right are unfulfilled and much other invaluable information.

XIV. PRELIMINARY CONCLUSIONS AND RECOMMENDATIONS

159. Although it is too early in his mandate for the Special Rapporteur to put forward a comprehensive list of conclusions and recommendations on promoting the full realization of the right to adequate housing, it is possible to make a series of preliminary remarks. These are designed to begin what will necessarily be a much longer-term process towards ensuring housing rights to all persons, families and communities. The Special Rapporteur would appreciate receiving comments and ideas concerning these preliminary remarks during the consideration of this report.

160. At the most fundamental level, the preceding analysis exposes a situation wherein much greater attention and coverage has been devoted to all levels of the right to adequate housing than is generally known. These many inspiring developments, however, remain disproportionately rhetorical in nature, when seen against the legal protection which should be accorded to those of the world's citizens whose right to a safe, secure and dignified place to live has yet to be realized.

161. There continues to be a pressing need for long-term and practical strategies to be elaborated and implemented aimed at ensuring the full realization of housing rights. There is a clear need for permanent and sufficient United Nations mechanisms for monitoring the global status of housing rights and for accurately delineating global housing needs and the costs and measures required for assessing and alleviating the situation. It may be advisable for the United Nations advisory services programme to develop expertise in the area of housing rights.

162. Along the same lines, procedures, both legal and political in orientation, should be developed which lead to an enhancement of governmental accountability vis-à-vis housing rights. The arguments supporting the utilization of housing as a guiding principle of State policy are deemed compelling by the Special Rapporteur.

163. These issues and the points raised above suggest that a more in-depth examination as to the utility of considering the eventual adoption of an international convention on housing rights designed to alleviate the on-going and often irreducible problems associated with housing rights is in order in the next report of the Special Rapporteur.

164. The Special Rapporteur has received a large quantity of information on the topic of this study, the majority of which could not be included in this progress report because of space constraints.

165. In order, therefore, to grasp fully the true nature of the housing rights struggle, and given the many valiant efforts under way - legal and otherwise - in different countries towards this goal, the Special Rapporteur would consider visits to several countries as an indispensable component of his future work. The Special Rapporteur requests the support of the Sub-Commission towards this end.

Notes

1/ See E/CN.4/1993/122, Commission on Human Rights, Report on the forty-ninth session; and International Service for Human Rights, Human Rights Monitor No. 20, April 1993, "Analytical report of the forty-ninth session of the United Nations Commission on Human Rights".

2/ E/CN.4/1993/122, chap. II.

3/ E/CN.4/1993/15, Report of the independent expert on the right of everyone to own property alone as well as in association with others.

4/ See E/1993/23.

5/ Resolution 1993/L.15/Rev.1, adopted on 3 May 1993 by the United Nations Commission on Human Settlements at its fourteenth session, held in Nairobi, 26 April-5 May 1993.

6/ The Universal Declaration of Human Rights proclaimed by the United Nations General Assembly in resolution 217 A (III) of 10 December 1948.

7/ International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly in resolution 2200 A (XXI) of 16 December 1966, entered into force on 3 January 1976; 119 States Parties as of May 1993.

8/ Matthew C.R. Craven, The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development (Ph.D. thesis, University of Nottingham, 1992), pp. 305-318.

9/ See list of these texts in the annex.

10/ The European Social Charter adopted at Turin on 18 October 1991, including Protocol 4 (5 October 1988).

11/ For a comprehensive listing of sources of legal recognition of housing rights, see Centre on Housing Rights and Evictions, Legal Sources of the Right to Housing in International Human Rights Law (Utrecht, COHRE, Feb. 1992).

12/ E/CN.4/Sub.2/1992/15, particularly paragraphs 67 and 77.

13/ Asbjørn Eide, "Article 25", in Universal Declaration on Human Rights: A Commentary (Eide, Alfredssen, and others, eds.), (Scandinavian University Press, Oslo, 1992, p. 387).

14/ E/CN.4/Sub.2/1991/17, second progress report prepared by Mr. Danilo Türk, Special Rapporteur on the Realization of Economic, Social and Cultural Rights, pp. 18-19.

15/ For a comprehensive overview of literature and other materials on the right to adequate housing which bear out these sentiments, see: COHRE, Bibliography on Housing Rights and Evictions, Centre on Housing Rights and Evictions, (COHRE, Utrecht, March 1993).

16/ The Committee on Economic, Social and Cultural Rights has helped to clarify the governmental obligations arising from the recognition of the right to adequate housing through a number of initiatives, including: (a) holding a "general discussion" on this right; (b) comprehensively revising the guidelines for States' reports under articles 16 and 17 of the Covenant on Economic, Social and Cultural Rights; (c) adopting its General Comment No. 4 on the Right to Adequate Housing; and (d) including in its concluding observations on some States parties' reports to the effect that the State in question was infringing the right to adequate housing owing to the practice of forced evictions.

17/ "Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights", in Human Rights Quarterly, vol. 9, No. 2, 1987, pp. 122-135.

18/ Official Records of the General Assembly, Forty-Third Session, Supplement No. 8, addendum (A/43/8/Add.1).

19/ See endnote 5 above.

20/ General Comment No. 3 (1990), The Nature of States Parties' Obligations (art. 2.1 of the Covenant, para.10, Committee on Economic, Social and Cultural Rights, Report of the Fifth Session (26 November-14 December 1990), E/C.12/1990/8, pp. 83-87.

21/ See, for instance: C. Scott "The interdependence and permeability of human rights norms: Towards a partial fusion of the International Covenants on human rights" in Osgoode Hall Law Journal, vol. 27, No. 4, 1989, pp. 769-878; G.J.H. van Hoof, "The legal nature of economic, social and cultural rights: A rebuttal of some traditional views" in The Right to Food (Alston and Tomasevski, eds.) 1984; and P. Alston and G. Quinn, "The nature and scope of State Parties' obligations under the International Covenant on Economic, Social and Cultural Rights", in Human Rights Quarterly, vol. 9, No. 2, 1987, pp. 156-229.

22/ Centre for Human Rights Right to adequate food as a human right, Geneva, 1989 (A. Eide, Special Rapporteur on the right to food), United Nations publication Sales No. E.89.XIV.2.

23/ See Commission on Human Rights resolution 1993/77 on Forced Evictions (adopted 10 March 1993), in which the Commission, inter alia, "Affirms that the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing" and "urges Governments to confer legal security of tenure on all persons currently threatened with forced eviction".

24/ See endnote 17.

25/ E/CN.4/Sub.2/1992/16.

26/ General Comment No. 4 on the Right to Adequate Housing (Art. 11.1 of the International Covenant on Economic, Social and Cultural Rights), adopted by the Committee on Economic, Social and Cultural Rights on 12 December 1991 at its sixth session, E/C.12/1991/4.

27/ National Campaign for Housing Rights, 1990, Some Essential Points for Shaping State Intervention in Housing in India Today (NCHR, Calcutta, January 1990).

28/ Vancouver Declaration on Human Settlements, para. 61.

29/ National Campaign for Housing Rights, The Housing Rights Bill (Draft) (NCHR, Bombay, July 1992).

30/ See note 27, Some Essential Points; and Miloon Kothari, "The Living Environment" in Seminar, No. 376 (Delhi, December 1990).

31/ See appendix 1 (Constitutional sources of the rights to housing) in Scott Leckie, From Housing Needs to Housing Rights: An Analysis of the Right to Adequate Housing Under International Human Rights Law, (Human Settlements Programme of the International Institute for Environment and Development, London, 1992, pp. 80-86).

32/ The "particularistic State" is defined by Blomkvist as a State "whose actions are ordered by something other than rules, e.g. whims of the ruler, friendship or family relations, esteem or political connections or money (bribes)" [p. 135]. Hans Blomkvist "Housing and the State in the third world: Misperceptions and non-perceptions in the international debate" in Scandinavian Housing & Planning Research, No. 6, 1989, pp. 129-141. See also, B. Rubin "The civil liberties movement in India" in Asian Survey, No. 28, 1987, pp. 371-392; Jai Sen "What is the nature of the housing question in India today?" in Lokayan, vol. 3, No. 3-5, pp. 22-49 and 119-147; and Jai Sen "Who is the real stoneman?" in Mainstream, 19 May 1990, pp. 17-22.

33/ General Comment No. 4 on the Right to Adequate Housing, (See note 26) para. 17.

34/ See the perspectives taken by the Committee on Economic, Social and Cultural Rights in document E/C.12/1992/CRP.2/Add.3.

35/ Generally, on the European Social Charter, see David Harris, The European Social Charter, (New York 1984); and L. Betten and A. Jaspers (eds.) 25 Years European Social Charter (Deventer, 1988)

36/ Paul Sieghart, The International Law of Human Rights, Clarendon Press, 1983, pp. 186-7.

37/ European Committee of Experts, Case Law of the European Social Charter (Supplement 1), Conclusion III, (art. 19 (4)), p. 93.

38/ Ibid., Conclusion VIII, p. 210.

39/ Ibid., Supplement III (1992), Conclusion XI-1, pp. 159-60 (Norway).

40/ Ibid., Conclusion XI-2, p. 147 (Spain).

41/ Ibid., Supplement 1 (art. 16), Conclusion III, p. 78.

42/ Ibid., Supplement 1, Conclusion III, p. 79.

43/ Ibid., Supplement 3, Conclusion XII-1, General Introduction, p. 30.

44/ Francis Coralie v. the Union Territory of Delhi, (AIR 1981, SC 746)

45/ Olga Tellis v. Bombay Municipal Corp. (1985), SCC 545.

46/ Shanti Star Builders v. Maryan Khimalal Totame & Ors (JT 1990 (1) S.C. 106, Civil Appeal No. 2598 of 1989).

47/ L. Burns, "Hope for the Homeless in the US: Lessons from the Third World", 1988, p. 34.

48/ Ibid.

49/ See Laurine Platzky and Cherryl Walker (for the Surplus Peoples Project), The Surplus People: Forced Removals in South Africa (Ravan Press, Johannesburg, 1985).

50/ Denis Murphy, A Decent Place to Live: Urban Poor in Asia, Asian Coalition for Housing Rights, Bangkok, 1990.

51/ E/C.12/1990/3 (report on the fourth session of the Committee on Economic, Social and Cultural Rights), p. 72.

52/ E/C.12/1990/8 (p. 64, Dominican Republic) and E/C.12/1991/4 (p. 32, Panama) and (reports on the fifth and sixth sessions of the Committee on Economic, Social and Cultural Rights).

53/ See reports on the fifth and sixth sessions of the Committee on Economic, Social and Cultural Rights, E/C.12/1990/8, p. 64 and E/C.12/1991/4, p. 32.

54/ E/C.12/1991/4, pp. 79-80 (Dominican Republic).

55/ Commission on Human Rights resolutions 1993/60 (Sudan) and 1993/61 (Zaire).

56/ A/47/367/Add.1, p. 14.

57/ Statement by the representative of the Kingdom of the Netherlands to the Third Committee at the forty-seventh session of the General Assembly, agenda item 97(A), 18 November 1992.

58/ See note 29, NCHR, The Housing Rights Bill.

59/ "Draft Convention on Housing Rights in Europe" (prepared by the Centre on Housing Rights and Evictions at the Conference "The Role of Housing in the Building of a Social Europe", held at Brussels, 24-25 September 1992.

60/ E/CN.4/Sub.2/1990/19.

61/ Miloon Kothari "The human right to adequate housing: Towards ideal indicators and realistic world views" (paper presented to the Seminar on Appropriate Indicators to Measure Achievements in the Progressive Realization of Economic, Social and Cultural Rights), HR/Geneva/1993/Sem/BP.16.

62/ See report of the Seminar on appropriate indicators to measure achievements in the progressive realization of economic, social and cultural rights, A/CONF.157/PC/73.

Annex

LEGAL SOURCES OF THE RIGHT TO ADEQUATE HOUSING
UNDER INTERNATIONAL HUMAN RIGHTS LAW

A. International conventions and covenants

1. International Covenant on Economic, Social and Cultural Rights, adopted by United Nations General Assembly in resolution 2200A(XXI) on 16 December 1966, entered into force on 3 January 1976, 106 States Parties as of June 1992. State compliance with the Covenant is monitored by the Committee on Economic, Social and Cultural Rights. Article 11.1 states:

> "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent".

2. International Convention on the Elimination of all Forms of Racial Discrimination, adopted by the United Nations General Assembly in resolution 2106A(XX), entered into force on 4 January 1969, 130 States Parties as of January 1992. State compliance with the Convention is monitored by the Committee on the Elimination of All Forms of Racial Discrimination. Article 5 states:

> "In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (e) in particular ... (iii) the right to housing".

3. International Convention on the Elimination of all Forms of Discrimination Against Women, adopted by the United Nations General Assembly in resolution 34/180 on 18 December 1979, entered into force on 3 September 1981, 99 States Parties as of January 1992. State compliance with the Convention is monitored by the Committee on the Elimination of All Forms of Discrimination Against Women. Article 14 (2) (h) states:

> "States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right ... (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications".

4. International Convention on the Rights of the Child, adopted by the United Nations General Assembly in resolution 44/25 on 20 November 1989, entered into force on 2 September 1990, 69 States Parties as of January 1992. State compliance with this Convention is monitored by the Committee on the Rights of the Child. Article 27 (3) states:

> "States Parties in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing".

5. International Convention relating to the Status of Refugees, adopted by the United Nations General Assembly in resolution 429(V) on 28 July 1951, entered into force on 22 April 1954. Article 21 states:

> "As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances".

6. International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, adopted by the United Nations General Assembly in resolution 45/158 on 18 December 1990, not yet in force. State compliance with this Convention will be monitored by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families. Article 43 (1) (d) states:

> "Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to ... (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents".

B. International declarations and recommendations

7. The Universal Declaration of Human Rights, adopted and proclaimed by the United Nations General Assembly in resolution 217A (III) on 10 December 1948. Article 25(1) states:

> "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".

8. Declaration on the Rights of the Child, proclaimed by the United Nations General Assembly in resolution 1386(XIV) on 29 November 1959. Paragraph 4 states:

"The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end special care and protection shall be provided to him and his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services".

9. International Labour Organisation Recommendation No. 115, on Worker's Housing, adopted at the forty-fifth session of the ILO Governing Body on 7 June 1961. Principle 2 states:

"It should be an objective of national [housing] policy to promote, within the framework of general housing policy, the construction of housing and related community facilities with a view to ensuring that adequate and decent housing accommodation and a suitable living environment are made available to all workers and their families. A degree of priority should be accorded to those whose needs are most urgent".

10. Declaration on Social Progress and Development, proclaimed by the United Nations General Assembly in resolution 2542 (XXIV) on 11 December 1969. Part I, article 6 and Part II, article 10 (f) state, respectively:

"(6) Social development requires the assurance to everyone of the right to work and the free choice of employment. Social progress and development require the participation of all members of society in productive and socially useful labour and the establishment, in conformity with human rights and fundamental freedoms and with the principles of justice and the social function of property, of forms of ownership of land and of the means of production which preclude any kind of exploitation of man, ensure equal rights to property for all and create conditions leading to genuine equality among people".

"(10) Social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms, through the attainment of the following main goals:...(f) The provision for all, particularly persons in low-income groups and large families, of adequate housing and community services.

11. Vancouver Declaration on Human Settlements, adopted by the United Nations Conference on Human Settlements in 1976. Section III(8) and Chapter II (A.3) state, respectively:

"Adequate shelter and services are a basic human right which places an obligation on Governments to ensure their attainment by all people, beginning with direct assistance to the least advantaged through guided programmes of self-help and community action. Governments should endeavour to remove all impediments hindering attainment of these goals. Of special importance is the elimination of social and racial segregation, inter alia, through the creation of better balanced communities, which blend different social groups, occupations, housing and amenities".

"The ideologies of States are reflected in their human settlement policies. These being powerful instruments for change, they must not be used to dispossess people from their homes or land or to entrench privilege and exploitation. The human settlement policies must be in conformity with the declaration of principles and the Universal Declaration of Human Rights.

12. Declaration on the Right to Development, adopted by the United Nations General Assembly in resolution 41/128 on 4 December 1986. Article 8 (1) states:

"States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustice".